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CURRENT LEGISLATION.

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RIGHTS OF ILLEGITIMATE CHILDREN UNDER MODERN STATUTES.—Under the early common law of England the lot of the child born out of wedlock was an intolerable one; he was regarded as *filius nullius*, having no right to inherit from either father or mother, no right to the surname of either parent, and no claim on them for support or education.¹ This stern policy has been defended as "to the encouragement of marriage and the discouragement of illicit intercourse";² but the surest proof that such punishment of the child for the wrongs of its parents had its real root in mediæval barbarism is furnished by the fact that modern English legislation imposes a liability for maintenance on the parents of bastards,³ while in most American jurisdictions statutes facilitating their legitimation,⁴ and giving them certain rights of inheritance,⁵

¹See Hooper, *Law of Illegitimacy*, 25, 122, 135; Peck, *Domestic Relations*, § 123.

²See *Clarke v. Carfin Coal Co.* [1891] A. C. 412, 427, *per* Earl of Selborne.

³Thus, under the Poor Law Amendment Act of 1834 (4 & 5 Will. IV, c. 76, § 71), and that of 1844 (7 & 8 Vict., c. 101, § 6), a mother is punished for failure to support her infant illegitimate child, if she has the means to do so. Where a bastard child becomes chargeable to the parish, guardians may recover the cost of the relief from the father under Bastardy Laws Amendment Act, 1873 (36 Vict., c. 9, § 5); and in proceedings by the mother brought under Bastardy Act, 1872 (35 & 36 Vict., c. 65, §§ 3, 4, 5) a defendant adjudged to be the putative father of the child may be ordered to pay not exceeding 5s. a week for its maintenance and education until it attains 13 or 16 years. See Matthews, *Law relating to Children and Young Persons*, 376; Hooper, *Law of Illegitimacy*, 136-138.

⁴See, *inter alia*, Rev. Stat. Ariz. 1913, Civ. Code, § 1103 (subsequent marriage of parents legitimates); Mass. Rev. Laws 1902, p. 1267 (subsequent marriage *plus* acknowledgment by father); N. J. Laws 1915, c. 173 (subsequent marriage of parents *plus* treatment of child as their own); Park's Ann. Code Ga. 1914, Civil, § 3013 (court may declare child legitimate on petition of father); Rev. Codes Mont. 1907, § 4821 (adoption into father's family after marriage of parents legitimates); Rev. Laws Nev. 1912, § 5833 (public acknowledgment by father, or reception into his family); Sess. Laws New Mex. 1915, c. 69 ("general and notorious" recognition by father, or in writing signed by father in presence of two competent witnesses.)

⁵Statutes of nearly all American jurisdictions give illegitimate children the right to inherit from the mother. See, *inter alia*, Code of Ala. 1907, § 3760; Fla. Comp. Laws 1914, § 2292; Hurd's Rev. Stat. Ill. 1915-1916, p. 980, § 2; Burns' Ann. Ind. Stat., Rev. of 1914, § 2998; Carroll's Ky. Stat. 1915, § 1397; Page & Adams Ann. Ohio Gen. Code 1910, § 8590; Hogg's West Va. Code 1913, § 3905. But in many states the right to represent the mother in inheriting from her kindred is denied. Comp. Laws Terr. of Alaska 1913, § 597; Deering's Civ. Code Cal. 1915, § 1387; Rev. Codes Idaho 1908, § 5703; Howell's Mich. Stat. 1913, § 10960; Gen. Stat. Minn. 1913, § 7240; Rev. Codes Mont. 1907, § 4821; Rev. Stat. Neb. 1913, § 1273; Pub. Laws No. Car. 1913, c. 71; Comp. Laws No. Dak. 1913, § 5745; Rev. Laws Okla. 1910, § 8420; Lord's Oregon Laws 1910, § 7351; Comp. Laws So. Dak. 1913, vol. 2, p. 194; Remington and Ballinger's Ann. Code Wash. 1910, § 1345; Wis. Stat. 1915, § 2274. In general, a bastard is not entitled to inherit from his father unless legitimated in some way

are also to be found on the books. The doctrine of *filius nullius*, however, has by no means lost its potency; save where expressly limited by statute, or by anomalous local precedent, it remains the law in English-speaking countries to-day.⁶

It is significant that the illegitimacy laws of few European nations equal in severity those of England and the other jurisdictions where *filius nullius* still holds sway. Whereas the liability of the father for the bastard's maintenance under the English statute is limited to the payment of an insignificant weekly sum,⁷ the German Civil Code obliges him to accord to the child until the completion of its sixteenth year education and maintenance in accordance with the mother's station in life.⁸ In France the issue of an incestuous or adulterous union can lay claim only to maintenance; but other illegitimate children are permitted, after compelling legal recognition by a court proceeding, to inherit one-half of the share to which a legitimate child would be entitled if the parents have also legitimate issue, three-quarters if there are only relatives other than descendants, and the whole of the inheritance if there are no other heirs.⁹ The Belgian law is similar.¹⁰ Under the Spanish Civil Code, all illegitimate children, where the paternity or maternity is sufficiently established, have a right to support; and natural children, who are defined as those born out of marriage of parents who, at the date of the conception of the child, could have married with or without dispensation, receive, if recognized by either parent, the right to bear that parent's name, and rights of inheritance corresponding broadly to those of legitimate issue.¹¹ In Switzerland children born in breach of marriage or in incest may not be legally recognized, but other illegitimates, if acknowledged by the father or successful in a suit to establish the paternity, may claim from the father maintenance to the end of the eighteenth year as well as a limited inheritance from him; and if it is established that the father promised marriage to the mother, or was guilty of a misdemeanor as to her at cohabitation, or abused his power over her, the child may claim the father's civil status, including his family name and domicile.¹²

It will be seen from the foregoing review that even progressive European countries have been slow to grant full family rights to illegitimate children. It remained for Norway, in the so-called Children's Rights laws of April 10, 1915, to take the initial step towards putting

(see foot-note 4); but there seem to be some statutes under which acts of recognition by the father will give the bastard the right to inherit without necessarily legitimating him for other purposes. See, *inter alia*, Rev. Codes Idaho 1908, § 5703; Burns' Ann. Code Ind., Rev. of 1914, § 3000; Dassel's Gen. Stat. Kan. 1909, §§ 2955, 2956; Me. Rev. Stat. 1903, p. 664; Gen. Stat. Minn. 1913, § 7240; Comp. Laws So. Dak. 1913, v. 2, p. 194.

⁶See Peck, Domestic Relations, § 123; Hooper, Law of Illegitimacy, 100 *et seq.*

⁷See foot-note 3.

⁸Loewy, Civil Code of the German Empire (1909), § 1708.

⁹Carpentier, Code Civil (Paris 1914), §§ 340, 341, 756-764.

¹⁰Todd, Treatise on the Belgian Law (London 1905), pp. 71, 73.

¹¹Código Civil Español (Spanish editions of Scaevola and Moreno, English edition of Walton), articles 114, 119, 134, 139-143, 840-847.

¹²Shick, Swiss Civil Code of Dec. 10, 1907 (1915), §§ 303, 304, 307-327.

bastards on an equal footing with legitimate issue. The Norwegian statute, among other subject-matters, enacts that a child whose parents have not entered into marriage with each other has a right to the family name of both father and mother, the right to inherit from both and from their relatives as if born in wedlock, and a claim on whichever of the parents has the care of it to maintenance and education in the same manner as if it were legitimately born.¹³

It is submitted that the Norwegian statute accomplishes in a direct and manly way a much-needed reform at which American courts and legislatures have hinted and connived, but to which they have not given their open support. The powerful presumption of legitimacy which the law raises even in cases where there is every indication of illicit conception,¹⁴ the numerous statutes declaring legitimate the issue of marriages null in law or dissolved by divorce,¹⁵ the almost universal tendency to give illegitimate children rights of inheritance from their mother and in case of legitimation or recognition from their father,¹⁶ the equally prevalent method of charging the father with some portion of the expense of maintenance in bastardy proceedings instituted by the mother or the overseers of the poor of the township where the child has become a charge,¹⁷—all these things are a tacit acknowledgment of the inexpediency and injustice of disposing of the bastard with the summary brutality of the common law. It does not help to discourage illicit intercourse to allow the father to escape all responsibility for the maintenance and education of his illegitimate offspring. The holy institution of matrimony is not exalted, nor is the public weal advanced, by the creation of an anomalous pauper class, the issue of temporary unions where passion may be given full sway because the cares of paternity and the sharing of name and heritage do not accompany it. Only by holding parents strictly to account can promiscuous propagation be restrained by law; and only by granting to the unfortunate bastard the same rights against his progenitors to which his

¹³See Article in *The Journal of the Society of Comparative Legislation*, New Series, no. XXXVI, pp. 284-296 (July, 1916).

¹⁴See Peck, *Domestic Relations*, § 105; Schouler, *Law of the Domestic Relations*, § 237 and note.

¹⁵See, *inter alia*, Kirby's Dig. Stat. Ark. 1904, § 2640; Park's Ann. Code Ga. 1914, Civil, § 2935; Rev. Codes Idaho 1908, § 5703; Gen. Stat. Minn. 1913, § 7105; Rev. Stat. Mo. 1909, § 342; Rev. Laws Nev. 1912, § 6117; Comp. Laws No. Dak. 1913, § 5745; Comp. Laws Utah 1907, § 2833.

¹⁶See foot-note 5.

¹⁷See, *inter alia*, Mills Ann. Stat. Colo., Rev. ed. 1912, §§ 421-426; Fla. Comp. Laws 1914, §§ 2598-2602; Hurd's Rev. Stat. Ill. 1915-1916, pp. 134-136; Rev. Stat. Me. 1903, pp. 833-834; Page & Adams Ann. Ohio Gen. Code 1910, §§ 12110-12135; Stewart's Purdon's Dig. of Stat. Law of Pa. 1905, pp. 955-957, as amended by Supplement to same, p. 5852; Gen. Laws R. I. 1909, pp. 354-357; Shannon's Ann. Code Tenn. 1896, §§ 7332-7353; Mass. Rev. Laws 1902, pp. 718-722, as amended by Supplement to same, pp. 642-644, and also by Acts of 1911, c. 53, Acts of 1912, c. 163, and Acts of 1913, c. 563. Although many American statutes leave it wholly in the discretion of the trial judges to what extent the child's father shall be charged with its maintenance in bastardy proceedings, some of them prescribe a maximum which is ridiculously small—thus in Arizona this must not exceed \$600; in Florida not more than \$50 yearly for ten years; in Tennessee not to exceed \$40 for the first year, \$30 for the second, \$20 for the third; in Illinois the maximum is \$100 for the first year, and \$50 for nine succeeding years.

legitimate brother is entitled, can justice be done to him. It is to be hoped that the lead of the enlightened legislature of Norway will soon be followed by our Assemblies.¹⁸

THE KENTUCKY STATE FIRE MARSHAL LAW.—The annual fire loss of the United States is greater than that of any country in the world, and constitutes a serious continuing drain on our national resources.¹ Since 1901 twenty-two states have passed what may be classed as "State Fire Marshal Laws" in an effort to reduce this loss to an attainable minimum.² These laws usually give the State Marshal the power to investigate fires of suspicious origin, and to remedy dangerous conditions. They have failed materially to reduce losses,³ largely because attention has been concentrated on the extermination of incendiarism rather than on the elimination of fires due to carelessness and ignorance.⁴

In view of these facts, a law passed this year in Kentucky is noteworthy.⁵ This statute makes it the duty of the State Marshal, in cooperation with municipal officials, regularly to inspect buildings all over the State, and to abate dangerous conditions.⁶ It gives him the power to make and enforce such regulations as will cause all structures to be "constructed, made and kept safe from loss or damage

¹⁸A movement in this direction is already perceptible. In 1915 three bills were introduced in the Illinois Assembly, providing respectively for giving to every *child* the father's surname; making children born in and out of wedlock equally heirs of father and mother and their kindred; and providing for inheritance by illegitimate child from putative father whenever such paternity shall have been established. See Legislative Digest of 49th General Assembly. State of Illinois, H. B. 454, 455, 602.

¹During the past ten years our average annual fire loss has approximated \$250,000,000. Weeks, *Avoidance of Fires*, 14. One-half of this loss "arises from ignorant, shiftless, dirty and vicious use of property", and could be prevented by intelligent foresight. Official Record of the First Amer. Nat. Fire Prevention Convention, 285; Report of Fire Waste Committee, Chamber of Commerce of the U. S. A. This is proved by the fact that our annual fire loss per capita is ten times that of Western Europe; in 1913 it was \$2.25 as compared with 33 cents for England, 49 cents for France, and 28 cents for Germany. Report of Fire Waste Committee, *supra*; Weeks, *supra*, 16. It is irrefutably established that this loss is largely preventable by the fact that careful inspection methods have reduced fire loss in Philadelphia by 28%, in New York by 20%, in Cincinnati by 40% and in other cities to an even greater extent. Report of Philadelphia Fire Marshal, January 1, 1914.

²See *e. g.* Ill. Laws 1909, p. 266; La. Acts 1914, No. 26, p. 81; Mich. Acts 1911, No. 79; Pa. Public Laws 658-664 (adopted 1911) etc. etc.

³For the past ten years the average loss by fire has remained substantially the same. See Weeks, *supra*, 18.

⁴Notwithstanding its broad powers, "the office of fire marshal concerns itself almost exclusively with attending fires and investigating their causes, prosecuting cases of suspected arson", and inspecting public buildings. "Practically no attention is given to the correction of . . . occupancy conditions that are chiefly responsible for an annual fire loss of approximately \$3,500,000 in Philadelphia." Preliminary and First Annual Reports of Fire Prevention Commission of Philadelphia, 1912.

⁵Ky. Acts 1916, c. 19, §§ 27-49, approved March 15, 1916.

⁶*Id.* § 37; on the value of inspection, see note 1, *supra*.